

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR FINAL RULE ADOPTION**

AGENDA III.B.4.

AGENDA ITEM SUMMARY: The proposed adoption of the amendment and repeal of existing air quality visibility rules and the adoption of new rules to fulfill federal requirements for establishing visibility protection for Class I areas. The proposed new rules provide a means of certifying and remedying visibility impairment that may be reasonably attributable to stationary sources of emissions. The Department intends to submit any rules adopted by the Board of Environmental Review (Board) in this proceeding into the State Implementation Plan (SIP).

LIST OF AFFECTED RULES:

ARM 17.8.1101	Definitions (amend);
ARM 17.8.1102	Incorporations by Reference (amend);
ARM 17.8.1103	Applicability – Visibility Requirements (amend);
ARM 17.8.1107	Visibility Models (amend);
ARM 17.8.221	Ambient Air Quality Standard for Visibility (repeal);
NEW RULE I	
(ARM 17.8. 1112)	Existing Impairment (adopt);
NEW RULE II	
(ARM 17.8.1113)	Exemption from Best Available Retrofit Control Technology (BART) (adopt); and
NEW RULE III	
(ARM 17.8. 1114)	BART Analysis (adopt).

AFFECTED PARTIES SUMMARY: The Proposed Visibility Rules target emissions from existing major stationary sources that may reasonably be anticipated to cause or contribute to any impairment of visibility.

SCOPE OF PROPOSED PROCEEDING: The Board shall consider the proposed new rules, rule amendments, and rule repeal. The Board will be required to consider several revisions, particularly the revision of NEW RULE II and NEW RULE III(2) as published in the initial rule notice on August 15, 2002, and make a decision regarding the adoption of the proposed and revised rules (See attachment 1).

BACKGROUND: The federal Clean Air Act requires all states with mandatory Class I federal areas to adopt visibility protection programs that meet the requirements of federal regulations. The Board has previously adopted ARM 17.8.1101 through 1111, which provide requirements concerning visibility protection for mandatory Class I federal areas applicable to new major stationary sources and major modifications.

On November 24, 1987, EPA issued a determination that Montana's SIP was deficient. The SIP

failed to provide for the remedy of visibility impairment that could be reasonably attributed to existing major sources. As a result of expanded requirements for regional haze visibility protection, the Department is proposing to address the deficiencies of the reasonably attributable portion of the federal visibility requirements, in part, through state rulemaking.

The Board is currently considering the adoption of rules, including the adoption of certain revisions made pursuant to comments from interested parties received after the rule was initially published on August 15, 2002 (See attachment 2).

HEARING INFORMATION: Hearing was held before Mr. Thomas Bowe on October 9, 2002 and comments were accepted until October 16, 2002. The Department published notice of the hearing and the opportunity for comment directly to all interested parties and the members of the Air Pollution Control Advisory Council and further published notice in widely-circulating newspapers in each Air Quality Control Region. Commenters included: Debra Wolfe representing the Department, Anne Hedges, representing the Montana Environmental Information Center, Charles Hansberry, representing Smurfit-Stone Container, Exxon-Mobil Corporation and several other industrial interests, Brian Mitchell, representing the U.S. National Park Service and the U.S. Fish and Wildlife Service, Kerrigan G. Clough, representing the U.S. Environmental Protection Agency, Joseph L. Scheeler, representing Ash Grove Cement Company, Catherine A. Laughner, representing Bull Mountain Development Company, and Don Allen, representing the Western Environmental Trade Association.

BOARD OPTIONS: The Board may:

1. Adopt the proposed rules as set forth in the original Notice of Proposed Amendment, Repeal, and Adoption of Rules;
2. Adopt the proposed rules as set forth in the original Notice of Proposed Amendment of Rules with the revisions as set forth in attachment 2;
3. Refuse to amend, repeal, or adopt the proposed rules.

DEPARTMENT RECOMMENDATION: The Department seeks to maintain its authority under the SIP and recommends the Board amend, repeal, and adopt the proposed rules with revisions as set forth in attachment 2. The Department specifically recommends the Board adopt NEW RULE II regarding the exemption of reasonably attributable sources from BART requirements.